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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,330	07/30/2001	William Edward Atherton	RPS920010041US1	4458

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EXAMINER

BUTLER, DENNIS

ART UNIT	PAPER NUMBER
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2115

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/918,330

Applicant(s)ATHERTON ET AL. **Examiner**

Dennis M. Butler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,9,10,17 and 18 is/are rejected.
- 7) ☒ Claim(s) 3-8,11-16 and 19-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10012001</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. This action is in response to the application filed on July 30, 2001. Claims 1-24 are pending.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-2, 9-10 and 17-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Westerinen et al., U. S. Patent 6,119,185.

Per claims 1, 9 and 17:

A) Westerinen et al teach the following claimed items:

1. an interconnect with adapter slots 210 of figure 3 and at column 11, lines 51-63;
2. a processor and memory with processor 202 and memory 220 of figure 3;
3. determining if a current configuration is optimized for system performance utilizing testing criteria with elements 18 and 20 of figure 1, at column 3, lines 12-25, at column 6, lines 30-61 and at column 8, lines 11-24;
4. generating alternate configurations in response to determining the current configuration is not optimized with the loop between elements 18 and 40 of figure 1, with figures 2A and 2B and at column 10, line 19 – column 11, line 11;
5. analyzing the alternate configurations utilizing the test criteria to identify at least one optimized configuration with the loop between elements 18 and 40 of figure 1, with figures 2A and 2B and at column 11, lines 12-50;
6. presenting the at least one optimized configuration to a user with the updated settings in the CMOS and NVRAM at column 11, lines 61-63 and at column 12, lines 31-32;
7. altering the testing criteria and analyzing the alternate configurations in response to not identifying an optimized configuration with selecting a resource setting that is not the highest weight when the highest weight setting is not available or not operable, with element 40 of figure 1 and at column 11, lines 38-50.

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Per claims 2, 10 and 18:

Westerinen describes a plurality of hardware adapters coupled to an interconnect with elements 210 through 216 of figure 3 and at column 11, lines 56-58.

Westerinen describes generating alternate connections between the plurality of hardware adapters and the interconnect at column 11, lines 22-23 (elements 3 and 4 of the analysis) and lines 37-46.

6. Claims 1, 9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schran et al., U. S. Patent Application 2002/0138443.

Per claims 1, 9 and 17:

A) Schran et al teach the following claimed items:

1. an interconnect with network 150 of figure 1;
2. a processor and memory are included in client machine 115 of figure 1, at page 2, paragraph 21 and at page 3, paragraph 28;
3. determining if a current configuration is optimized for system performance utilizing testing criteria with Network Configuration Settings 135 of figure 1, with figure 3 and at page 3, paragraph 26;
4. generating alternate configurations in response to determining the current configuration is not optimized with elements 320 and 335 of figure 3, at page 3, paragraphs 29 and 30 and at page 6, paragraph 52;
5. analyzing the alternate configurations utilizing the test criteria to identify at least one optimized configuration with elements 320 and 335 of figure 3, at page 3, paragraphs 29 and 30 and at page 6, paragraph 52;

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6. presenting the at least one optimized configuration to a user with figure 6 and at paragraph 49.

B) The claims seem to differ from Schran et al in that Schran et al fails to explicitly teach altering the testing criteria and analyzing the alternate configurations in response to not identifying an optimized configuration as claimed.

C) However, Schran describes allowing a user to select network optimization user preferences that are used to determine the testing criteria at paragraph 25. It would have been obvious to one having ordinary skill in the art at the time the invention was made to alter the testing criteria (user preferences) and analyze the alternate configurations in response to determining that the previous user preferences did not optimized the configuration settings as desired.

7. Claims 3-8, 11-16 and 19-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis M. Butler whose telephone number is 703-305-9663. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dennis M. Butler

Dennis M. Butler
Primary Examiner
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